

RULEMAKING NOTICE FORM

Notice Number _____	Rule Number _____	Env-Wt 900
1. Agency Name & Address: Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	2. RSA Authority:	RSA 482-A:11
	3. Federal Authority:	N/A
	4. Type of Action:	
	Adoption	<u> X </u>
	Amendment	<u> </u>
	Repeal	<u> </u>
	Readoption	<u> </u>
	Readoption w/amendment	<u> </u>

5. Short Title: Stream Crossings

6. (a) Summary of what the rule says and the effect of the rule on those regulated:

The existing wetlands rules, Env-Wt 100-800, contain various provisions relative to stream crossings that are general and not compiled in a way that makes them easily accessible. The proposed amendments and new rules would strengthen, and make more specific, the criteria for design and approval of stream crossings. The proposed rules result from the stakeholders workgroup created to address stream crossing issues. In this rulemaking, the Department proposes to adopt Env-Wt 900 to complement the changes proposed in separate-but-related rulemakings for Env-Wt 100 (definitions) and various sections in Env-Wt 303, 500, and 800.

The new chapter, Env-Wt 900, supplements existing criteria in Env Wt 300 and Env Wt 400 relative to need, minimization, and avoidance and the assessment of the functions and values of wetlands and surface waters that may be impacted by any project. The chapter establishes three tiers of stream crossings based on watershed size and slope at the crossing, corresponding to minimum impact, minor, and major projects. The chapter identifies general stream crossing criteria and tier-specific design criteria for aquatic organism passage, erosion, flood flow, and watercourse connectivity. The rules also provide a mechanism for obtaining approval of alternate designs.

Activities which are exempt from Env-Wt 900 include routine roadway and railway maintenance, minimum impact forestry, minimum impact agriculture, and minimum impact trail activities. (A permit-by-notification is being created for small impact replacements of crossings for residential property, but the replacement must comply with the general design criteria.)

Tier one stream crossings are minimum impact projects. Two subcategories of tier one crossings will be established. For a single-family residential property or building lot and property used for noncommercial recreational purposes, the contributing watershed is >20 acres and ≤200 acres and the average stream approach channel slope is ≤7.5%. For all other properties, including single-family subdivisions, the contributing watershed is ≤200 acres and the average stream approach channel slope is ≤7.5%.

Tier 2 stream crossings are minor impact wetlands projects located where the contributing watershed is >200 acres and <640 acres and the average stream approach channel slope is >7.5% and <20%. These projects must meet the general criteria, the UNH stream crossings manual and specific design standards. Mitigation is required only if the rules cannot be met. A P.E. stamp is required for the plans, and the crossing must accommodate the 100-year frequency flood and cause no increases on flood stages on abutter land.

Tier 3 stream crossings are major impact wetlands projects located where the contributing watershed is ≥640 acres, the average stream approach channel slope is ≥20 %, or certain special resources are present. Tier 3 crossings must meet the general criteria, the Stream Crossing Manual and specific design criteria. A P.E. stamp is required for the plans, and the crossing must accommodate the 100-year frequency flood and cause no increases on flood stages on abutter land. If the project is a tier 3 only because of the special

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resources, it can be lowered to tier 2 or tier one (as appropriate based on watershed size and channel slope) if the impacts to the special resources are specifically mitigated.

The proposed rules benefit the public by making the state and federal process consistent. The proposed rules benefit the environment by requiring stream crossings to allow for aquatic organism passage and to accommodate flooding events. This will help fish and amphibians as well as water flow and sedimentation. The regulated community will benefit from crossings that can accommodate stream flow for 25-year or 100-year floods (depending on the size of the watershed, etc.), which are expected to mitigate flood events. These rules adopt recommendations made by the Legislative Flood Study Commission by establishing criteria relating to flood events and requiring mitigation for impacts in 100-year flood plains. Additionally, with the anticipated passage of legislation (SB 65) to establish an In Lieu Fee Stream Mitigation Fund, these rules will provide the threshold and framework for future work on this issue.

6. (b) Brief description of the groups affected:

Any individual or entity, including state agencies, political subdivisions, and private developers, that needs or wishes to construct or maintain a stream crossing may be affected by the proposed rules.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	Statute(s) Implemented
Env-Wt 900	RSA 482-A:1 & 3; RSA 482-A:11

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Karla McManus	Title:	Wetlands Rule Coordinator
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The rules also can be viewed in PDF at <http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm> TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, September 18, 2009**

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearings scheduled for:

Date and Time: **Tuesday, September 1, 2009, 10:30 a.m. to 12:30 p.m.**

Place: **Rooms 112, 113 & 114, DES Offices, 29 Hazen Drive, Concord, NH**

Date and Time: **Thursday, September 3, 2009, 6:00 p.m. to 8:00 p.m.**

Place: **Littleton Community House, 120 Main Street, Littleton, NH**

Date and Time: **Tuesday, September 8, 2009, 6:00 p.m. to 8:00 p.m.**

Place: **Keene Public Library, Ruth Huntress Auditorium, 60 Winter Street, Keene, NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 09:114 , dated 07/15/09

See Attached.

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11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The rules do not create, modify, or expand any program in such a way as to require action by political subdivisions and so do not require any expenditures by political subdivisions. The rules thus do not violate Part I, Article 28-a of the N.H. Constitution.